

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
VICTOR GUEVARES,

Plaintiff,

**ORDER**

- v -

CV-06-2930 (JG)(VVP)

ACXIOM, et al.,

Defendants.  
-----X

By letter dated February 26, 2007, the defendant Tyco Healthcare Group LP seeks an order compelling the co-defendant Acxiom to sign a stipulation consenting to the dismissal of the plaintiff's claims against Tyco, as well as Tyco's cross-claims against Acxiom. By letter dated February 27, 2007, Acxiom opposes the application, seeking instead to complete the discovery it has requested from Tyco before agreeing to dismissal.

Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure permits the parties to an action to consent to the dismissal of claims by stipulation. Tyco's request of the court is thus oxymoronic: an order compelling Acxiom to consent is not consent. A party may seek dismissal by court order, and thus without a party's consent, but only "upon such terms and conditions as the court deems proper." Fed. R. Civ. P. 41(a)(2). The granting of any such motion, however, is beyond the authority of the magistrate judge. *See* 28 U.S.C. § 636(b)(1)(A) (excepting motions for involuntary dismissal from the decisional authority of magistrate judges). Accordingly, the motion must be denied.

The court notes in passing that requiring Tyco to respond to discovery requests before dismissal appears to be an appropriate term or condition for the court to impose if Tyco were to seek involuntary dismissal. In any event, by the time any such motion were decided, the time for responding to the discovery requests in issue here will have expired. It is thus likely that the better (and probably less expensive) course for Tyco to follow is simply to complete the discovery sought as expeditiously as possible.

**SO ORDERED:**

Viktor V. Pohorelsky  
VIKTOR V. POHORELSKY  
United States Magistrate Judge

Dated: Brooklyn, New York

March 1, 2007